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ARTICLE

Crimesong: Some Murder Ballads and Poems Revisited

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and
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The thing that hath been, it is that which shall be; and that which is done
is that which shall be done: and there is no new thing under the sun.¹

I. Introduction

This short Article, by a law professor and a law librarian, was written because of our personal interest in the old ballads, and because of the professor's desire to spice up the "meals-ready-to-eat" diet of problems and cases fed to students in law school courses.² But more than anything else, this Article was written for the fun of it. To the extent that we appear to be advancing the occasional high-sounding hypothesis, we want the reader to understand that our speculations are offered only as an invitation to the sociologists, musicologists, and historians. Our backgrounds are limited, and we do not expect to be taken all that seriously.

Although many of the early British ballads were probably of historical origin (e.g., *Mary Hamilton*³), many others probably were not. At least some ended up in North America little changed.⁴ Still, there are some American originals based on identifiable and well documented court cases (e.g., *Omie Wise*,⁵ *Tom Dooley*,⁶ and *Pearl Bryan*⁷). Sometimes old ballads resur-

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faced, modified only slightly to fit new cases.⁸ Eventually, the ballad was largely supplanted by the written word.⁹ The ballad form, however, never disappeared completely, and in one case, a ballad even inspired a haunting childrens' book (for adults?).¹⁰

II. Role of the Ballads in Borderland/ Backcountry Culture

On the role of the ballads in Borderland (Northern England) and Backcountry (North American—particularly, dare we say it, mountain areas) culture, we defer to David Hackett Fischer, the author of *Albion's Seed, Four British Folkways In America*.¹¹

By comparison with other parts of the world, the backcountry was not illiterate Even so, the backcountry was an oral culture in which writing was less important than the spoken word This culture was impoverished in its written literature, but it was rich in ballads and folktales, which were carefully handed down from one generation to the next [The tunes] "were mostly tragical, and were denominated 'love songs about murder.'"¹²

This was a culture that permitted men to use violent means to control their women. The culture did, however, set some limits, and some of these murder ballads were "warnings (as some have interpreted *Omie Wise*) to . . . men not to go too far in their prescribed violence."¹³ It has also been suggested that the murder ballad served, among other things, to place the murderer outside of the community, "engender[] sentiment of self-virtue within the community," and serve as a mild deterrent.¹⁴

III. Themes, Old and New

We were interested in exploring the old themes—and the motives that inspire murder—to see how often the old ballads could be tied to actual cases. We were as much surprised by what we did not find as by what we found. Perhaps others can help us fill in the blanks.

A. Infanticide

One of the most popular British ballads is *Mary Hamilton*,¹⁵ a sorrowful story of infanticide and execution. We expected to find some link between variations of this ballad and actual cases of infanticide, but we were disappointed. According to Bartlett Jere Whiting, the ballad “has been seldom found in North America.”¹⁶ By this we assume Whiting means that distinctively local variations have not been found, because many people in North America claim to have heard the ballad during their childhood.¹⁷

Is it possible that the absence of American variations was due to freer backcountry sex ways? That is, maybe there was less infanticide because there was less of a social stigma associated with pregnancy out of wedlock.¹⁸ This may be a stretch, but we are informed that:

[o]n the subject of sex, the backsettlers tended to be more open than were other cultures of British America Rates of prenuptial pregnancy were very high in the backcountry . . . [just as] rates of illegitimacy and prenuptial pregnancy had long been higher in the far northwest of England than in any other part of that nation.¹⁹

We also note certain trends in early American law.

Scores of infanticide cases . . . were never prosecuted. Many young women resorted to “baby dropping” to rid themselves of unwanted offspring; without any positive identification of the infants, prosecution was well-nigh impossible [Moreover,] . . . coroners and inquest juries [were unable] to judge malice or willful neglect in cases of infant death, or whether a child had been born alive. [J]urors virtually never found women guilty of infanticide unless the prosecution established that a callous mother had planned to kill the child. Prosecutors . . . understood this and bowed to popular opinion rather than insisting on statute law.²⁰

It is worth comparing this *lex non scripta* to the cautionary need for proof of the *corpus delicti* (sufficient proof of the body of the crime) in the two following kinds of homicide cases: (1) those in which the victim’s body cannot be found (which, contrary to popular belief, does *not* necessarily rule out the possibility of a successful prosecution²¹) and (2) those in which the body is found, but examination of the body and surrounding

circumstances reveal that the death may have resulted from accident, suicide, or natural causes.

The most common of the latter type used to be cases in which a mother was suspected of infanticide. In those cases it could not be determined whether the baby died from criminal or natural causes. In such a case, even a confession would not be sufficient evidence, in the absence of corroborating evidence, of *corpus delicti*.²²

The infanticide cases provide a good illustration of how the ballad, and later art forms like the novel, can be inspired by actual cases, and how they can then influence popular attitudes, as well as influence later advocates, judges, and juries.²³ For example, Christine Krueger argues that the ballads and broadsides, and such works as Wordsworth's *The Thorn*²⁴ and Scott's *Heart of Midlothian*,²⁵

located infanticide in pastoral settings in order to render mothers as rural innocents inhabiting a sacrosanct natural space [T]he privatization and pastoralization of infanticide aimed at placing women who killed their infants in a virtual super-natural space, outside the state's jurisdiction ²⁶

The ballad tradition offered a source of narrative devices and potent images of wronged womanhood adaptable to a representational strategy aimed at blocking infanticide prosecutions and convictions ²⁷

[By Victorian times] [c]ourts and judges . . . seemed to be working in concert with many medical experts and literary writers, first to encourage sympathy for infanticide defendants . . . and then to stave off reformers' efforts to bring such women to justice ²⁸

Nowadays, with astounding progress in forensic science, prosecutions for infanticide are not uncommon.²⁹ But the murder ballad is no longer in fashion.³⁰ In any event, we doubt that even the most sanguine balladeer would know what to do with the likes of Susan Smith³¹ and Andrea Yates.³²

B. Murder by Drowning

In murder ballads, drowning one's lover seems to be a particularly popular *modus operandi*—the fifty-first way to leave your lover.³³ Indeed, in a paper on file at Berea College, Russ Dowda quipped that "one can't help but conjecture that if

Appalachian women had only known how to swim, we'd have only half the murder ballads we do now."³⁴ One example involving such a drowning is the popular tune *Banks of the Ohio*,³⁵ in which a young man drowns his girlfriend because she is reluctant to marry him.³⁶ More often though, the victim is drowned because she has become inconvenient, pregnant, or both. In some cases the male is something of a social climber and wants to "marry up," as the expression goes. This is an "All-American" theme.³⁷ Ballads involving such issues are often based on real murders, and one of the best examples of this is the much-studied classic *Omie Wise*.

Jonathan Lewis murdered Naomi Wise in 1807, in Randolph County, North Carolina. The story was told in some detail in an 1851 newspaper account written by a local clergyman named Braxton Craven.³⁸ Naomi, or "Omie," was an indentured servant. Lewis clerked in a store in Ashboro, the county seat, and was employed by a wealthy merchant. Lewis was from a poor, wild clan, but nevertheless had his eye on the merchant's daughter. He was on his way up, but he had to get rid of some extra baggage—the pregnant girlfriend, Omie Wise. He tricked Omie into eloping. Lewis told Omie that they would ride to a justice's house and be wed.³⁹

She got up behind him and away they did go,
 They rode till they came where deep waters did flow.
 "Now Omie, poor Omie, I'll tell you my mind,
 My mind is to drown you and leave you behind."
 "O, pity your infant and spare me my life,
 And let me go rejected and not be your wife."
 But he kicked her and cuffed her, until she could not stand,
 And then he drowned little Omie below the mill dam.⁴⁰

The song says that Lewis tied her skirt up over her head, threw her into the river, and rode away.⁴¹ He was immediately suspected of the murder and was arrested. Court records show that he languished some time in jail before his indictment, but that he broke out of jail and was not recaptured until 1811. There is some dispute with respect to whether he was convicted and of what crime, but he apparently did not receive a long sentence, and was released, a pauper, in 1813. He supposedly confessed to the crime while on his deathbed.⁴²

Like *Omie Wise*, the ballad *Lula Viers*⁴³ was based on a real murder case that took place in Kentucky. Lula Viers was drowned by her boyfriend John Coyer in the Ohio River.

She threw her arms around him,
Before him she did kneel.
Around her waist he tied
A piece of railroad steel.⁴⁴

The body apparently washed up somewhere near Ironton, Ohio. Her mother finally identified the body after reading about the case in a news article written by a reporter named Arodent. In the meantime, Coyer had joined the Army. He was finally arrested, however, and put in the Floyd County, Kentucky jail. Inexplicably, Coyer was never tried for Lula's murder.⁴⁵ According to the song,

Soon an army officer came,
And Took Him Off to France.
John Coyer never went to trial,
Nor sought to clear his name.⁴⁶

Perhaps the most interesting Kentucky ballad is *Stella Kenny*,⁴⁷ which is associated with a famous murder in Fleming County, Kentucky. Poor Stella, whose name appears in the reporters and newspapers⁴⁸ as Stella Kinney, was from Olive Hill in Carter County, Kentucky. She had been sent by her father to help her uncle, Robert Frasure (sometimes spelled Frashure or Frazier), take care of his pregnant, ailing wife and his several children. During her extended stay, her uncle apparently impregnated her. When her father asked that she return home, her uncle decided to cover his tracks. On the buggy ride to Olive Hill, he killed Stella with a hatchet. He was tried and convicted three times, and the conviction finally stuck.⁴⁹ The killing occurred either on or near a huge rock, which, since Stella's murder, locals have referred to as "Bloody Rock." According to legend, the rock would bleed whenever it rained. Unfortunately, the road was widened and the rock was buried.⁵⁰ The ballad of *Stella Kenny* was collected in the Kentucky Folklore Record in a couple of different versions. The following is an example:

She was carried to the city Hall
 Where she gave some awful sighs,
 And the sight of her muddy clothes,
 Would have brought tears to your eyes.

There was her dear old father,
 Kneeling by her side,
 "With seven gashes in her head
 No wonder Stella died."⁵¹

C. Geometry Lessons (Of Jealousy and Other Motives)

The ballad of *Tom Dooley*⁵² (in real life, Tom Dula) was popularized by The Kingston Trio in its song *Tom Dooley* in the 1950s.⁵³ It was conspicuously absent from Olive Burt's 1958 *American Murder Ballads*.⁵⁴ Nevertheless, The Kingston Trio's version was not the earliest, and *Tom Dooley* is probably the most studied and written upon American murder ballad.⁵⁵ Unfortunately, the tune does not even begin to tell the whole story of the crime. It alludes to a love triangle ("the eternal triangle"), but provides no real detail, and only the slightest hint of a motive.⁵⁶ It takes for granted the fact that Tom was guilty of murdering a young woman named Laura Foster (whose name was not mentioned in The Kingston Trio version). Indeed, the ballad contains what amounts to a confession in song. In the real case, Tom pleaded not guilty, fought the prosecution, and maintained his innocence until the end.⁵⁷

The real facts of the case are quite sordid. Young Tom Dula had returned to North Carolina after serving in the Confederate Army. He was apparently a popular fiddler and a womanizer. He was carrying on relationships with both Laura Foster and Ann Melton. Laura Foster had a poor reputation for chastity; in fact, it was said that she had "round heels."⁵⁸ At some point, Tom contracted syphilis, and he suspected that it was Laura who had passed it to him. He was overheard threatening to "put through" (kill with a knife) whoever had given him the disease. The body of Laura Foster was found a few weeks after her disappearance in a shallow grave near "the Bates place." She had been stabbed in the left breast between the third and fourth ribs. Circumstantial evidence pointed to Tom, or Ann Melton, or both, as the killers (more on the subject of Ann's possible role later). With respect

to Tom, there was evidence that he and Laura had headed out to a fatal meeting. Among the witnesses was Betsy Scott, who testified that she had met Laura on the morning of the day she disappeared. Laura was riding her father's mare and was carrying a bundle of clothes. Betsy was permitted to testify, over objection, that Laura was on her way to "the Bates place," that Tom was going another way, and that Laura expected to meet him there. After Tom was convicted, the admission of this evidence was ruled erroneous, and a new trial was ordered.⁵⁹ While the opinion of the North Carolina Supreme Court is short and somewhat opaque, the court appears to have reasoned that the use of Laura's out-of-court statements, offered to prove Tom's intent to go to "the Bate's place" to meet Laura, was inadmissible hearsay.⁶⁰

This little case is a gem of a find for any teacher of Evidence Law, because it presents a variation on the classic case of *Mutual Life Insurance Co. v. Hillmon*.⁶¹ *Hillmon* is a favorite case for law professors.⁶² It deals with the famous hearsay exception endorsing the use of an out-of-court statement by a declarant to prove the declarant's intent to do something in the future.⁶³ In *Hillmon*, the plaintiff was trying to prove that Hillmon died from an accidental gunshot wound at Crooked Creek, Kansas, and that his widow was entitled to the proceeds of several life insurance policies. Mutual Life refused to pay, contending that the dead body was that of one Walters, and not of Hillmon, and that the plaintiff was actually attempting to pull off an insurance fraud. At issue were letters from Walters to his sister and to his fiancé stating that he intended to go to Crooked Creek, and that he intended to go with Hillmon. The admissibility of the first statement was not controversial, but the admissibility of the second statement, which the Supreme Court endorsed, was very controversial, and continues to be controversial to this day.⁶⁴ Here is what one modern commentary has to say:

Here is the rub: What someone says can only prove what he and another did if used to support both forward and backward looking inferences. The forward-looking inference is that the speaker acted as intended, which is fine. The backward-looking inference is that he had already met the other person when he spoke, that the two had agreed to do something together (the other had spoken words indicating his intent), and that both later acted accordingly. These inferences are *not* fine, and

apparently the framers of . . . [Federal Rule of Evidence 803(3)] . . . meant to reject *Hillmon* in its broadest reach.⁶⁵

Apparently, the North Carolina Court that decided Dula's first appeal (twenty-five years before *Hillmon* was decided), may have held views that are consistent with those of the drafters of the modern Federal Rules of Evidence (although it is debatable whether they knew exactly what they were doing). It was the use of Laura's out-of-court statements to prove what Tom Dula had done that the court found offensive. In the later appeal of his second conviction, the court ruled that it was proper to admit Laura's declaration of her intent to go to "the Bates place" to prove that she probably went there.⁶⁶ On the other hand, that was never in doubt. There was apparently no serious question that it was her body that was found near "the Bates place," although the body was badly decomposed, and forensic evidence was slim by today's standards.⁶⁷

The "love triangle" in the case did not involve two men (one a jealous killer) and a woman, but rather, it involved one man and two women. John Foster West theorizes that Ann Melton, who was jealous of Laura Foster and her relationship with Dula, may have been the killer, although Tom would certainly have been an accessory—the one who disposed of the body. In any event, he argues that the circumstantial evidence against Dula did not "exclude every other [reasonable] hypothesis [of innocence]," which is required by the jury charge in many states.⁶⁸

Another popular theory of Laura Foster's murder has been advanced by Doc Watson, the famous folk singer.⁶⁹ He claims, based on stories he heard when he was growing up in the area where the murder occurred, that there was actually a rectangle of intrigue. He claims that the sheriff in the county, Sheriff Grayson, had courted both Laura Foster and Ann Melton, and that at the time of the murder, Sheriff Grayson had a crush on Ann Melton. The suggestion is that there may have been some sort of conspiracy—at least a conspiracy of silence. Watson claims that Sheriff Grayson later married Ann Melton. He also claims that on her death bed, Melton confessed to Grayson that she had committed the murder. Grayson was so disturbed by her revelations that he left North Carolina.⁷⁰

Watson's version is contradicted by West, who points out that the Grayson who arrested and held Tom (without the authority of the law, according to West) was a *Colonel Grayson*.⁷¹ The sheriff of the county was one William Hicks. West also attempts to debunk a story that suggests the person who did the detective work and made the arrest was a schoolteacher named Bob Grayson, who had a "thing" for Laura Foster. West insists that Ann Melton died while she was still married to her first husband (cuckold), James Melton, and that she died of tertiary syphilis.⁷² The truth has obviously been lost in time.

Nowadays jurors demand more. According to a grumpy prosecutor we know, DNA made things *more difficult* for the prosecutor. Jurors expect it even in the most unlikely cases. We think he protests too much.

D. Fratricide and Sororicide

We have already alluded to the popularity of the *Edward* ballad, which deals with patricide or fratricide, depending on the version. Numerous variations of the ballad have been found in North America, but we could find no link to any actual case.⁷³ There is also a popular British ballad dealing with the subject of sororicide, the murder of one's sister. *The Twa Sisters*⁷⁴ appeared in broadside form in 1656 as *The Miller and the King's Daughter*. A familiar version is called *Cruel Sister*.⁷⁵ In the British and Scandinavian versions, there is a supernatural element. A harpist finds the murdered sister's body and makes a harp from her breastbone. The harpist appears before the surviving sister and the harp begins to play and sing by itself, condemning the cruel sister. Again, we were unable to find any variations tied to an actual murder case.⁷⁶

Of course, there is also the familiar doggerel jingle about Lizzie Borden:⁷⁷

Lizzie Borden took an axe
And gave her mother forty whacks;
When she saw what she had done
She gave her father forty-one.⁷⁸

However, the murder inspired no ballad. On the other hand, Olive Wooley Burt reports that it did inspire a "contemporaneous quip":

A neighbor met Lizzie on the morning of August 4th, 1892, and asked her what time it was. "I don't know," Lizzie replied, "I'll go axe father."⁷⁹

E. The Murder That Wasn't?

One of the authors was perusing a worn-out copy of George Warvelle's now obscure but still readable and informative *Essays in Legal Ethics*,⁸⁰ when he came across the following note:

Two brothers, by the name of Boorn, were arrested in Vermont in 1819 and charged with the murder of a Russel Colvin. They were tried upon an indictment for the offense in the Supreme Court of that state at Bennington. The presumption of guilt was violent, drawn from many circumstances proved by different witnesses. They had quarreled with Colvin and threatened his life. Nay, they were actually seen in a violent personal contest with him in a field on the day of his disappearance. His disappearance was scarcely noticed at the time, for Colvin was a poor man; no one cared for him alive, and no one was interested to prove him dead. Some time after, however, bones were discovered in a pit or natural hollow in the field where the quarrel had been witnessed, near the very spot of the supposed fatal altercation. These bones were identified as "not dissimilar" to such as might have composed the body of Colvin. In the same pit were also found a knife and one or more buttons. The former was identified as having belonged to Colvin and the latter as having been attached to his garments. The prisoners *actually confessed* that they were guilty of the murder. They were convicted and sentenced to death. The annals of our criminal jurisprudence, however, are not stained with the crime of judicial murder by the execution of that sentence. Russel Colvin was all that while alive—discovered as a farm laborer in New Jersey. Whether he had wandered after his altercation with the Boorns, which they really supposed had resulted in his death, is unknown. Regardless, he was brought back in season to save the lives of the convicts.⁸¹

We mention this fascinating bit of Americana in the hope that someone will locate a ballad dealing with this case. To our knowledge, the closest thing to a ballad was a poem, and not a very good one, which was appended to an anonymous pamphlet printed in 1820 and styled *Sketches of the Trial of Stephen and Jesse Boorn for the Murder of Russel [sic] Colvin*.⁸² Since we have digressed this far, we might as well digress a bit further.

The poem alludes to the fact that knowledge of a dream may have led the jury astray, and caused them to convict the Boorn brothers. The dream alluded to was a dream had by an uncle of the Boorn brothers named Amos Boorn. Whatever his motives,

he claimed to have dreamt that the ghost of Russell Colvin had come to his bedside and led him to the burial site. Everyone had heard about the dream. Knowing this, the prosecutor put the uncle on the stand at trial, not to testify about the dream, but because his presence on the stand would cause the jurors to think about the dream and remember that a close blood relative had, in effect, accused the defendants of the crime.⁸³ Ghosts and dreams—what interesting themes.⁸⁴

In any event, the lyric appears to have pre-dated the *Boorn* case, and, thus, it was apparently adapted to refer to a jury and the return of a “murdered” man:

Our fate is wretched hard indeed,
The clamorous people say;
'Some Impious wretch has dream'd a dream,
And dream'd our lives away,'
Can it be true in any land
Where science sheds one ray,
That idle dreams and prophecies
Should take our lives away?⁸⁵

F. Insult to Injury

The prevalence and the fear of bodysnatching, used to satisfy the experimental needs of medical men, inspired a 1798 poem by the prolific Southey entitled *The Surgeon's Warning*.⁸⁶ Another particularly gruesome poem entitled *The Invisible Girl*,⁸⁷ presumably English, was sing-songy enough to be put to music.

The Invisible Girl
'Twas in the middle of the night
To sleep young William tried
When Mary's ghost came stealing in
And stood at his bedside.

Oh, William, dear! Oh, William, dear!
My rest eternal ceases;
Alas! My everlasting peace
Is broken into pieces.

I thought the last of all my cares
Would end with my last minute,
But when I went to my last home,
I didn't long stay in it.

The body snatchers, they have come
And made a snatch at me,
It's very hard them kind of men
Can't let a body be.

You thought that I was buried deep,
Quite Christian-like and chary
But from her grave in Mary-le-bone,
They've come and boned your Mary.

The arm that used to take your arm
Is took to Dr. Vyse;
And both my legs are gone to walk
The hospital at Guy's.

I vowed that you should take my hand,
But fate gave us denial;
You'll find it there at Dr. Bell's
In spirits and a phial.

As for my feet, my little feet,
You used to call so pretty,
There's one, I know, in Bedford Row,
The t'other's in the city.

I can't tell where my head is gone,
But Dr. Carpus can;
As for my trunk, it's all packed up
To go by Pickford's van.

I wish you'd go to Mr. P.
And save me such a ride;
I don't half like the outside place
They've took for my inside.

The cock it crows, I must be gone;
My William, we must part;
But I'll be yours in death, although
Sir Astley has my heart.

Don't go to weep upon my grave,
And think that there I be;
They haven't left an atom there
Of my anatomy.⁸⁸

When professors of medicine came from Edinburgh,
Scotland, to Philadelphia, New York, and Lexington, Kentucky

(the then famous Medical College of Transylvania University), so did the work of the bodysnatchers.⁸⁹ Bodysnatchers, also referred to as “Resurrectionists,”⁹⁰ added insult to injury.⁹¹ All too frequently the murder victim was not permitted to rest in peace, but instead ended up as a skeleton in some local doctor’s office.⁹² A particularly interesting account of such cruelty is the spectacular 1836 New York trial of Richard Robinson. In that case a prostitute named Helen Jewett was murdered with a hatchet by one of her “customers,” and suspicion fell on Robinson. Robinson was acquitted after a sensational trial in which, predictably, the victim was put on trial. Helen Jewett’s body was stolen by a team of medical students who needed a specimen for dissection. Subsequently, her skeleton ended up in a cabinet in the College of Physicians and Surgeons on Barclay Street.⁹³

As one can imagine, the doings of the bodysnatchers and their medical masters were sure to end up in a murder ballad. The inspiration was an 1838 Pennsylvania murder. Joshua Jones shot and killed his sleeping wife and tried to pass off her death as a suicide. After he was sentenced to death, Jones sold his body to Dr. French for ten dollars, relying upon Dr. French’s promise to do what he could to restore life after the body had been taken from the scaffold. However, Dr. French and two medical friends carried the body off to a nearby town where they boiled the flesh from the bones to make a skeleton for Dr. French’s office. An 1880 version of the song was collected by Olive Wooley Burt.⁹⁴ The following stanza is from *The Ghost of Joshua Jones Appears to Doctors Thorp and French and Converses with Them*:

And now, you villains, Thorp and French,
You burnt my garments, root and branch,
My coffin burned to boil my bones,
Because I was the murderer Jones.
You snapped my jaws at boys you know—
Old Satan will serve you just so.
You threw my flesh about the floor,
The like was never seen before.⁹⁵

It was not until state legislators passed “anatomy laws,” which provided a legal supply of corpses for dissection, that the bodysnatchers were put out of business.⁹⁶

G. The Tables Turned

We have already seen that the traditional ballads may not reflect all of the facts of actual cases (e.g., the ballad of Tom Dula/Dooley). Sometimes old material is adapted, or new names are inserted into old ballads, in order to make them topical. Here is a traditional ballad called *The Lone Green Valley*.⁹⁷ Insofar as his motive is concerned, the murderer is a sort of country Othello.

Way down in a lone green valley
Down where the roses bloom and fade
There was a jealous lover
In love with a beautiful maid

One night the moon shone brightly
The stars were shining, too
And to this maiden's cottage
The jealous lover drew

Come, love, and we will wander
Where the woods are gay
While strolling, we will ponder
Upon our wedding day

So on and on they wandered
The night bird sang above
The jealous lover grew angry
With the beautiful girl he loved

Down on her knees before him
She pleaded for her life
But deep into her bosom
He plunged the fatal knife

Oh, Willie, won't you tell me
Why have you taken my life
You know I've always loved you
And wanted to be your wife

I never have deceived you
But with my dying breath
I will forgive you, Willie
And close my eyes in death⁹⁸

This ballad has received many reworkings, a couple of which are noteworthy because they illustrate how some older ballads have been changed to fit new crimes.

In 1896, Pearl Bryan left her home in Greencastle, Indiana, and went looking for a job in Cincinnati, Ohio. Some time later, her headless body was found across the river in Fort Thomas, Kentucky. It turned out that she had been impregnated by a minister's son, William Wood. He had sent her off on a train for an illegal abortion, to be performed by two dental students, Scott Jackson and Alonzo Walling. The dental students gave Pearl cocaine as an anesthetic. However, she overdosed on the drug and died. In a panic, the dental students removed Pearl's head to frustrate identification and ditched the body along Alexandria Pike outside of Fort Thomas.

Burt reports that she first heard of Pearl Bryan when the name was included in a Utah shepherd's version of *The Jealous Lover*, which, needless to say, hardly fits the facts of Pearl's real story. Burt has also collected other versions which come closer to the real story. In some, however, the balladeers can't resist having Pearl in love with Jackson or Walling.⁹⁹ The Pearl Bryan case has since received a thorough investigation in at least one scholarly tome.¹⁰⁰ In this work, Anne Cohen describes two important ballad themes, the "murdered girl" stereotype¹⁰¹ and the "criminal brought to justice" theme:

The events of the murdered-girl formula are the following: wooing of trusting girl by artful man; luring of girl to lonely spot; murder of girl, who offers little resistance; abandonment of girl's body. Occasionally a fifth element—regret—is added, in which the murderer is sorry for his deed. The elements of the criminal-brought-to-justice formula are the following: youth, upbringing, or past deeds of criminal; crucial crime and events leading to it; pursuit, capture, and trial; execution.¹⁰²

Poor Pearl. Poor Chandra!¹⁰³ What *did* happen to that girl?

These themes have been subjected to considerable adaptation and innovation.¹⁰⁴ This brings us to a more contemporary, non-traditional theme—the possibility of "tables turned."

One of this Article's authors encountered another Pearl, Pearl Drew, while reading Edwain Borchard's classic *Convicting*

The Innocent,¹⁰⁵ and included her story in one of a series of law review articles dealing with the crime of perjury.¹⁰⁶ In that interesting Mississippi case, Pearl did the killing and confessed to it through her own reworking of "The Jealous Lover." This case is a precursor of the notorious "Burning Bed Case" of the 1970s,¹⁰⁷ where a woman who shot her husband while he was sleeping pushed the envelope of "self-defense."¹⁰⁸ Here's the story.

It seems that Pearl, the daughter of "Pop" Gunter, was married to the jobless, shiftless, "philandering," and alcoholic Marvin Drew. Marvin was apparently quite abusive and seemed to have convinced himself that Pearl's expected child had been fathered by someone else. This unhappy marriage ended one July night in 1929 when neighbors heard a shot and found Marvin in bed, shot dead, with a revolver laying by his side. At first, the authorities labeled the case a suicide; but later, the couple's daughter, one of three children, claimed that she was asleep alongside her father when old "Pop" Gunter came in the room and plugged Marvin. Faced with this, the very pregnant Pearl decided to confirm the story. "Pop" pleaded "not guilty," contending that he had been too drunk to commit the murder. The truth was that Pearl had shot Marvin in a fit of rage and jealousy.

"Pop" was sentenced to twenty-five years in prison.¹⁰⁹ Pearl moved away and gave birth to her fourth child. Things then took an odd turn. Pearl asked Mississippi Governor Theodore Bilbo to pardon her father, sending along her confession in the form of a variation of the "The Jealous Lover."

Down in a lonely graveyard,
Where the flowers bloom and fade,
There lies my darling sleeping
In a cold and silent grave.
So listen now, dear people,
And hear my story through,
I pray God 'twill warn you
Of the fate of Marvin Drew.
He died not broken-hearted
Nor by a disease he fell,
But in an instant parted
From the ones he loved so well.
Down on my knees before him

I pleaded for his life,
But deep into his bosom
Had plunged a forty-five.
But, O, How sad the ending
To sit beside my dear
For I have often told him
My darling, don't you fear.
Then he said, 'No, my darling,
Your words can never be,
For I soon will be sleeping
In Hell away from thee.
But listen to me, wifie,
Come closely while I tell,
When I am gone, please don't forget me—
The one who loves you well.
I know I've been a rambler,
I know I've done you wrong,
But don't forget me, darling,
Whenever you sing this song.
I want to work for Jesus,
And work both night and day,
For He will gladly help you
And surely lead the way.
The time has come, my darling,
When you and I must part,
The bullet of that forty-five
Has surely plunged my heart.
But kiss our little children,
And tell them I am gone,
Don't let them follow my footsteps
For I have led them wrong.'
This poison 'mule,' dear people,
Did cause this incident;
It stole these children's father,
Who for their love was meant.
To prison went my father,
All innocent of this crime;
I could not long endure this,
My father doing time.¹¹⁰

A Judge Pegram was directed to consider this evidence, and the judge concluded that Pearl had coached her young daughter to tell the tale on "Pop" so that she would not have to deliver her baby in prison. She had apparently been taken by surprise by the initial finding of "suicide." "Pop" was let out on a ninety-day release, and Pearl was indicted. She then pleaded guilty, and a

sympathetic Judge Pegram gave her a suspended sentence! As folks say out in the country, “some people need killin’.” Governor Bilbo was outraged and refused to pardon “Pop.” He apparently thought that someone should do the time, and he didn’t much care who.

Somebody ought to be in the penitentiary all the time for the murder of a sleeping man. If Judge Pegram does not believe Mrs. Drew is guilty enough to serve her term, then the man convicted of the murder will have to serve his term. Husbands ought to have some protection.¹¹¹

However, by this time, “Pop” and Pearl had fled Mississippi and apparently “got away clean.”

We end with Pete Seeger’s whimsical *False Knight Upon The Road*.¹¹² The earliest version of that ballad was a brief and cryptic account of what happened when a “wee boy” met and matched wits with the devil.¹¹³ Seeger’s *False Knight* appears to be a combination of *Banks of Ohio* and *Omie Wise*, but with a twist. In *False Knight*, an innkeeper’s daughter (from Northcumberland—the Northcountry) is lured off by a dashing, but false, predator (the son of a squire). However, by the time he gets her to the water’s edge to drown her, she has put two and two together and turns the tables on her would-be murderer, pushing him “into the sea.” She ignores his pleas for help, and, as was said of Clementine, he was no swimmer. The maiden returned to her home, where she was confronted by her highly inquisitive and talkative parrot,¹¹⁴ with whom she makes a deal. If he does not tell on her, she will buy him a golden cage and hang it on an ivory tree.

This seems an appropriate note to end on.

ENDNOTES

1. *Ecclesiastes* 1:9 (King James).

2. For an original and fun approach to the law of evidence, which includes references to history and literature—and movie clips too—see GEORGE FISHER, *EVIDENCE* (Foundation Press 2002). One of Professor Underwood's favorite finds has to do with the "best evidence rule" (the rule that if you are trying to prove the contents of a writing, you must produce the original or account for its unavailability). While looking for prints at a shop in England, he came across a bookplate from an obscure novel or story, Rider Haggard's *Mr. Meeson's Will*. For a full text of the book go to www.gutenberg.org/1/1/9/1/11913/11913-8.txt. The eccentric Mr. Meeson had his will tattooed on the back of a "serving girl," poor Augusta Smithers. The plate illustrates the following scene:

Poor Augusta coloured and her eyes filled with tears as she slowly undid the dust-cloak which hid her shoulders (for, of course, she had come in low dress) She took off the cloak, and the silk handkerchief beneath it, and stood before the court dressed in a low black dress.

"I am afraid that I must ask you to come up here," said his Lordship. Accordingly she walked round, mounted the bench, and then turned her back to the Judge in order that he might examine what was written on it. This he did very carefully with the aid of a magnifying glass, referring now and again to the photographic copy which Doctor Probate had filed in the registry.

Id. at 101.

3. THE ENGLISH AND SCOTTISH POPULAR BALLADS 379 (F.J. Child ed., Pageant Book Co. 1956).

4. Compare the classic *Edward*, *id.* at 169-70, with the "modern" Muleskinner Jones ballad, *How Come that Blood on Your Coat Sleeve?*, available at http://www.muleskinnerjones.com/terrible_stories/lyrics/blood.html. The Muleskinner Jones ballad involves a Cain and Abel type fratricide precipitated by a dispute over "a sprout that might have been a tree." There is also another version styled *The Murdered Brother*, which was collected in North Carolina by Kentuckian John Jacob Niles in 1934. JOHN JACOB NILES, *THE BALLAD BOOK OF JOHN JACOB NILES* 67 (Univ. Press of Kentucky 2000) (1961). In his comment

on *The Murdered Brother*, Leslie Nelson-Burns adds, somewhat gratuitously, that Niles retouched some of the ballads that he collected, and suggests that he is not altogether a reliable source, which presumably does not go down well in this neck of the woods. *Francis J. Child Ballads: Biography, Lyrics, Tunes, and Historical Information*, available at <http://contemplator.com/child/>. About the only difference between the old and the new versions is the absence of the allusion to maternal complicity in the old versions.

5. See *infra* section III.B. of this Article.

6. See *infra* section III.C. of this Article.

7. See *infra* section III.G. of this Article.

8. See the discussion of *Pearl Bryan*, *infra* in text accompanying note 99.

9. See Karen Halttunen, *Devine Providence and Dr. Parkman's Jawbone: The Cultural Construction of Murder as Mystery*, available at <http://www.nhc.rtp.nc.us:8080/ideasv41/halttun4.htm>.

Dr. Halttunen traces the origins of crime literature to the early American "execution sermons," which served to warn parents not to neglect the religious instruction of children. *Id.* This is a digression, but the first recorded murder ballad may have been Leadbelly's *In The Pines* [a.k.a. *Where Did You Sleep Last Night*], available at http://www.prato.linux.it/~lmasetti/percorsi_incrociati/leadbelly.php, which is particularly gruesome. It reports the murder of a man by his wife or girlfriend: "His head was found in a drivin' wheel / But his body was never found." *Id.*

10. BARRY MOSER, POLLY VAUGHN: A TRADITIONAL BRITISH BALLAD DESIGNED, ILLUSTRATED, AND RETOLD IN AN AMERICAN SETTING (Little Brown & Co. 1992). In this retelling a young miner in Tennessee is hanged for accidentally shooting his fiancée, Polly, just before their wedding. *Id.* *Polly Vaughn* is an old Scottish ballad that has appeared in several versions in the United States. See John Renfro Davis, *Polly Vaughn*, available at <http://www.contemplator.com/Scotland/pollyv.html>. The older version contains supernatural overtones and hints of Celtic mythology (e.g., "she had an apron wrapped around her, and he took her for a swan"—a maiden changing into a swan, and so forth). *Id.*

11. DAVID H. FISCHER, *ALBION'S SEED, FOUR BRITISH FOLKWAYS IN AMERICA* (Oxford Univ. Press 1989).

12. *Id.* at 718-19. It has been suggested that American murder ballads were sung because there was "no other means of recording them," and because they are "the lineal descendants of the old penny sheets" that used to be disseminated "at the foot of the gallows on execution day [in England]." See *Blood on the Lips of America: Ideological Functioning of the American Murder Ballad*, available at <http://www-personal.umich.edu/~hbrown/mrd.html>; see also Kristen Culler, *The Subgenre of Murder Ballads in the Street Literature of Britain* (1997), available at <http://mh.cla.umn.edu/culler.html>. Culler notes that in the ballads the narrator often shifts his or her speaking voice from one character to another, for example from victim to perpetrator, which has the effect of addressing those in the community who can relate to the crime from different perspectives. *Id.* For a further discussion of "narrator-switching," see Edward Baptist, *My Mind Is to Drown You and Leave You Behind: "Omie Wise," Intimate Violence, and Masculinity*, in *OVER THE THRESHOLD: INTIMATE VIOLENCE IN EARLY AMERICA* 103-104 (Christine Daniels & Michael V. Kennedy, eds., Rutledge 1999). Moreover, Kristen Culler notes that collectors tended to get the ballads from mothers and children, which is consistent with their educational purpose. Culler, *supra*. For more on this topic, see *supra* note 9 for a discussion of the "execution sermon;" see also CHARLES K. WOLFE, *KENTUCKY COUNTRY: FOLK AND COUNTRY MUSIC OF KENTUCKY* 149 (Univ. Press of Kentucky 1982) ("Jean [Ritchie] recounts how certain old songs and ballads had been associated with particular family members and events Songs functioned for the Ritchies the way Polaroid snapshots do for a modern family—they were the keys to memories, capsules of family history.").

13. Baptist, *supra* note 12, at 95.

14. Kosta Stratigos, *Blood on the Lips of America: Ideological Functioning of the American Murder Ballad* 5 (Nov. 1, 1995) (unpublished manuscript on file at Univ. of Michigan). The deterrent by way of a warning to young women is present in *Pearl Bryan*, for a discussion see *infra* note 101, and in *Ella Speed*. The latter ballad is about a married New Orleans prostitute, an "octoroon," who was shot by her Italian lover Louis Martin ("The deed that old Bill Martin done, Was commit murder with a Colt 41"). John Cowley & John Garst, *Behind the Song, Sing Out!* FOLKMUSIC MAG., Spring 2001, at 69-70. Louis's defense was that the shooting was accidental, and occurred when he was trying to take a gun away from her to prevent her suicide. *Id.* Louis was convicted of manslaughter in a trial presided over by a Judge John Ferguson, who was also associated with the case of *Plessy v. Ferguson*, 163 U.S. 537 (1896). *Id.* The appeal of Louis's conviction, which was based

on a humdrum hearsay point, is cited at *State v. Martin*, 18 So. 508 (La. 1895). For a further discussion of the deterrant function of murder ballads, see Kenneth D. Tunnell, *99 Years is Almost For Life: Punishment for Violent Crime in Bluegrass Music*, 26 J. POPULAR CULTURE 165 (1992). Tunnell's article collects versions of *Pretty Polly*, *Down In The Willow Garden* (Rose Connally), *Omie Wise*, *Little Sadie*, *Poor Ellen Smith*, and *Knoxville Girl* (sometimes appearing as *Wexford Girl*, and based on the English *Berkshire Tragedy*). *Id.*

15. ENGLISH & SCOTTISH POPULAR BALLADS, *supra* note 3, at 379. Interestingly, in rural Scotland, women came to be important prosecuting witnesses in infanticide cases, serving as something like modern forensics experts! DEBORAH A. SYMONDS, *WEEP NOT FOR ME: WOMEN, BALLADS, AND INFANTICIDE IN EARLY MODERN SCOTLAND* (Pennsylvania State Univ. Press 1997).

16. TRADITIONAL BRITISH BALLADS 81 (Bartlett J. Whiting, ed., Appleton-Century-Crafts 1955).

17. Of course, Joan Baez did a version of *Mary Hamilton* during the Sixties, available at [www.stlyrics.com/songs/j/joanbaez 2038/maryhamilton96489.html](http://www.stlyrics.com/songs/j/joanbaez%2038/maryhamilton96489.html). Clearly, lots of people from big cities heard it, giving the tune a new round of popularity.

18. See Merrill D. Smith, *Unnatural Mothers: Infanticide, Motherhood, and Class in the Mid-Atlantic, 1730-1830*, in *OVER THE THRESHOLD: INTIMATE VIOLENCE IN EARLY AMERICA 173-84* (Christine Daniels & Michael V. Kennedy, eds., Rutledge 1999). Smith observes "delivering a baby before marriage did not necessarily prevent a woman from later marrying" *Id.* On the other hand, it should be noted that a single mother who was also a servant might face the prospect of loss of position or extension of the indenture. *Id.* at 176.

19. FISCHER, *supra* note 11, at 680-81; see also the extended discussion in Baptist, *supra* note 12, at 95; see also Rus Dowda, "He Took Her By Her Golden Curls And Throwed Her Round And Round": Appalachian Women In The 19th Century And Their Image In The Murder Ballads Of The Time (1978 unpublished manuscript, on file at Berea College) ("Most of the women [in the ballads] were killed because they were pregnant by lovers who did not want to marry them. There would have been comparatively little hardship, though, on the woman if she had borne the child as an unmarried mother. Illegitimate children were not shunned in the mountains then, nor were unwed mothers.").

20. G.S. Rowe & Jack D. Marietta, *Personal Violence in a "Peaceable Kingdom": Pennsylvania, 1682-1801*, in *OVER THE THRESHOLD: INTIMATE VIOLENCE IN EARLY AMERICA*, *supra* note 18, at 33. See also Christine L. Krueger, *Literary Defenses and Medical Prosecutions: Representing Infanticide in Nineteenth Century Britain*, 40(2) *VICTORIAN STUDIES* 270 (1997) (observing that there are references to "baby dropping" in 18th century paintings and engravings, including Hogarth's *Gin Lane*).

21. See Rollin M. Perkins, *The Corpus Delecti Of Murder*, 48 VA. L. REV. 173 (1962).

22. WAYNE R. LAFAYE & AUSTIN W. SCOTT, JR., *CRIMINAL LAW* 18 (West Publishing, 2d ed. 1972) citing *In re Flodstrom*, 277 P.2d 101 (Cal. 1954).

23. See also Krueger, *supra* note 20, at 270, 274 (discussing the murderer as victim, turning the tables).

24. William Wordsworth, *The Thorn*, in *COMPLETE POETICAL WORKS OF WILLIAM WORDSWORTH* (Andrew J. George ed., Darby Books 1981).

25. SIR WALTER SCOTT, *THE HEART OF MIDLOTHIAN: THE WORKS OF SIR WALTER SCOTT* (Kessinger Publishing Co. 2004) (1830).

26. Krueger, *supra* note 20, at 272.

27. *Id.* at 276.

28. *Id.* at 290.

29. Reported cases of infant abandonment and infanticide have increased since 1976 and seemed to peak in the early 1900s. See *Homicide of Children under age 5 by age of victim, 1976-2000*, Bureau of Justice Statistics website at www.ojp.usdoj.gov/bjs/homicide/children.htm; see also Michelle Operman, *Mothers Who Kill: Coming to Terms with Modern American Infanticide*, 34 AM. CRIM. L. REV. 1, 25-26 (1996).

30. Then again, there was Bobbie Gentry's *Ode To Billy Joe*, which contained the following lyrics: "He said he saw a girl that looked a lot like you up on Choctaw Ridge and she and Billy Joe was throwin' something off the Tallahatchie Bridge." Bobbie Gentry, *Ode to Billy Joe*, on *THE GOLDEN CLASSICS OF BOBBIE GENTRY* (Collectables 1998). In this modern ballad, one of the "killers" commits suicide out of remorse. *Id.* Suicide from remorse is also found in one unusual version of the stereotypical "drowning ballad," styled *Joe and Mary*, collected in Michael E. Bush, *Murder Ballads in Appalachia* 77 (1977) (unpublished M.A. thesis, Marshall University) (on file with the Marshall University Library).

31. See Christopher Sullivan, *Susan Smith Sentenced To Life; Parole Possible*, CHARLESTON GAZETTE, July 29, 1995, at A1 (discussing Smith's drowning of her two children).

32. See Pam Easton, *Yates Guilty, Could Get Death; Jurors Take Less Than 4 Hours to Reject Insanity Plea*, SAN ANTONIO EXPRESS-NEWS, Mar. 13, 2002, at A1 (referencing Yates's drowning of her children); see also Sally Satel, *The Newest Feminist Icon, a Killer Mom*, WALL ST. J., Sept. 11, 2001, at A26. For yet more recent news, see Peggy O'Hare, *Mom Charged in Killing Two Sons, Injuring Third*, HOUSTON CHRON., May 11, 2003, at 30A.

33. While drowning the unfortunate lover seemed to be the most romantic way to do away with the significant other in many popular ballads, killing with a knife was the more favored method. See Stuart A. Kane, *Wives with Knives: Early Modern Murder Ballads and the Transgressive Commodity*, 38 CRITICISM 219 (1996). Curiously, the knife was a common weapon of choice wielded by wives who killed their husbands in the 17th Century. See *id.* Could this trend have anything to do with the fact that the wife was eternally in the kitchen and the knife was the only sharp instrument she had at hand? A series of ballads serving as warnings for wives comes from this period. In the 19th Century, American wives often murdered their husbands with poison. See JAMES MOHR, *DOCTORS AND THE LAW: MEDICAL JURISPRUDENCE IN NINETEENTH-CENTURY AMERICA* 68 (Oxford Univ. Press 1993).

34. Dowda, *supra* note 19.

35. Bill Monroe & Doc Watson, *Banks of the Ohio*, available at <http://www.geocities.com/Nashville/3448/banks.html>.

36. *Id.*

37. See AMERICAN MURDER BALLADS AND THEIR STORIES 32-34 (Olive W. Burt ed., 1958); The Historical Society of the Courts of the State of New York, *The Murder Trial of Chester Gillette*, available at www.courts.state.ny.us/history/gillette.htm (telling the story of the famous upstate New York Big Moose Lake murder of Grace Brown by Chester Gillette); see also THEODORE DREISER, *AN AMERICAN TRAGEDY* (Boni & Liveright 1925) (a novel loosely based on Grace Brown's murder). For an interesting use of Drieser's work, see LEO KATZ, *BAD ACTS AND GUILTY MINDS: CONUNDRUMS OF THE CRIMINAL LAW* 201-09 (Univ. of Chicago Press 1987). Moreover, Olive Wooley Burt notes that these are several ballads based on the murder of Grace Brown. OLIVE WOOLEY BURT, *AMERICAN MURDER BALLADS AND THEIR STORIES* 32-34 (Citadel Press 1964).

38. See Baptist, *supra* note 12, at 95.

39. *Id.*

40. *Id.* at 94.

41. *Id.* at 96.

42. *Id.* at 96-97.

43. *Lula Viers*, available at <http://swniff.numachi.com/~rickheit/dtrad/pages/tiLULAVIER.html>.

44. Dowda, *supra* note 19, at 28. This ballad is referred to as *Lula Vower* in Kenneth D. Tunnell, *Blood Marks the Spot Where Poor Ellen Was Found: Violent Crime in Bluegrass Music*, 15(3) POPULAR MUSIC AND SOCIETY 102 (1991). The same work refers to *Stella Kinny*, a similar Kentucky ballad recounting the 1915 murder of a pregnant Fleming County, Kentucky girl. *Id.* See *infra* text accompanying notes 47-51. *Stella Kinney* and *Lula Vower* are also mentioned in CHARLES WOLFE, KENTUCKY COUNTRY: FOLK AND COUNTRY MUSIC OF KENTUCKY 8, 165 (Univ. Press of Kentucky 1982). According to Wolfe, “[Lorretta Lynn] remembers a song she sang in school about ‘Luly Barrs who got pregnant by this man but he wouldn’t marry her. He tied a piece of railroad steel around her neck and threw her into the Ohio River, and they found her three months later.’” *Id.* at 163.

45. *Id.*

46. *Id.* at 29-30.

47. *Stella Kenny*, 8 KENTUCKY FOLKLORE RECORD 113-24 (1964).

48. See LEXINGTON [KENTUCKY] HERALD, May 4, 1915, CARTER COUNTY HERALD, June 3, 1915 and May 6, 1915, and CARTER COUNTY NEWS, May 6, 1915.

49. *Frasure v. Commonwealth*, 185 S.W. 146 (Ky. 1916); *Frashure v. Commonwealth*, 195 S.W. 409 (Ky. 1917); and *Frasure v. Commonwealth*, 202 S.W. 653 (Ky. 1918). His final appeal was argued by a young lawyer from Louisa, Kentucky, Fred M. Vinson, who served as Chief Justice of the United States Supreme Court from 1946 to 1953.

50. See <http://hauntedky.50megs.com/carter.htm>.

51. *Stella Kenny*, *supra* note 47.

52. JOHN F. WEST, THE BALLAD OF TOM DULA: THE TRUE STORY BEHIND THE MURDER OF LAURA FOSTER AND THE TRIALS AND EXECUTION OF TOM DULA 17-34 (Moore Publishing Co. 1970).

53. This song topped the Billboard charts at number one in 1958. For lyrics see http://www.lyricsxp.com/lyrics/t/tom_dooley_the_kingston_trio.html.

54. See Burt, *supra* note 37. For ballad collections available on the internet, see Nick Cave & The Bad Seeds Lyrics: Murder Ballads, found on JBJ's Digital Kingdom *available at* http://w1.499.telia.com/~u49903585/en/music/nc/album_lyrics/marked_ballads.htm; *see also* Eric Zorn, Murder Ballads *available at* www.ericzorn.com/music/murder.

55. See, e.g., WEST, THE BALLAD OF TOM DULA, *supra* note 52; JOHN FOSTER WEST, LIFT UP YOUR HEAD, TOM DOOLEY: THE TRUE STORY OF THE APPALACHIAN MURDER THAT INSPIRED ONE OF AMERICA'S MOST POPULAR BALLADS (Down Home Press 1993).

56. This is not unusual. British ballads are also curiously devoid of detail regarding motive. See, e.g., Whiting, *supra* note 16, at 37 (observing that "[i]n no case apparently does a British or American version give a motive for the murder, but this is not an uncommon ballad omission."). An interesting exception to this is the unique *Lamkin* (a.k.a. *Lankin*, *Long Lankyn*, or *Cruel Lincoln*), which can be found in ENGLISH & SCOTTISH POPULAR BALLADS, *supra* note 3, at I:320. This ballad appears in America, but it is Scottish or English and probably historical. It is rooted in class struggle. Lamkin is a mason who is cheated out of his pay by the local lord. In this gruesome ballad, Lamkin murders the lord's wife and infant child in revenge. Lamkin rocks the cradle as the nurse sings and the babe's blood runs out of the cradle and down the hall floor. *Id.* Is this the origin of the scary Hollywood theme of *The Hand That Rocks the Cradle*? THE HAND THAT ROCKS THE CRADLE (Hollywood Pictures 1992). Sick. An American version can be found at M.J.G. HODGART, THE BALLADS 98-102 (Hutchinson Univ. Library 1950). Jealousy as a motive is also prominent in the *Ballad of Lord Thomas and Lady Elinor* or *The Brown Girl* (a.k.a. *The Ballad of Lord Thomas and Lady Elinor*), which can be found in ENGLISH & SCOTTISH POPULAR BALLADS, *supra* note 3, at V:166. It seems that the ex-girlfriend confronted the bride at her wedding and was stabbed by the bride. The groom took exception to his lover dying and turned and stabbed his new bride and then stabbed himself in a fit of remorse or pique. *Id.* This is truly a jealousy triangle of epic proportions. Josephine McGill, *Sing All a Green Willow*, 228(2) N. AM. REV. 218, 221-22 (1929).

57. WEST, THE BALLAD OF TOM DULA, *supra* note 52, at 44-46.

58. WEST, LIFT UP YOUR HEAD, *supra* note 55, at vii.

59. See *State v. Dula*, 61 N.C. 211 (1867).

60. *Id.* at 213.

61. 145 U.S. 285 (1892).

62. For a very interesting account of the sculduggery on both sides of the “v.” in this case see Brooks W. MacCracken, *The Case of the Anonymous Corpse*, 19(4) AM. HERITAGE 51 (1968).

63. *Hillmon*, 145 U.S. at 294-95.

64. *See id.* at 294-300.

65. CHRISTOPHER B. MUELLER & LAIRD C. KIRKPATRICK, EVIDENCE 927 (2d ed. 1999). *But see* *People v. Alcade*, 148 P.2d 627 (Cal. 1944) (holding that evidence that the victim told her roommate that she was going out with defendant was admissible to prove that she went out with him). Mueller and Kirkpatrick also cite a North Carolina case, *State v. Vestal*, 180 S.E.2d 755 (N.C. 1971).

66. *State v. Dula*, 61 N.C. 437 (1868).

67. On the primitive state of forensics in those days consider the Condry Dabney case. *See* Underwood, *infra* note 108, at 330. This was a case of mistaken identity of a corpse. The authorities assumed that a body found in an abandoned mineshaft was that of the missing Mary Vickery. A ring, covered with decayed flesh, was proffered on a stick to Mary’s father, and he thought it looked like a ring he had given her for her birthday. He also thought he recognized an L-shaped repair to one of her stockings. After Dabney’s conviction, Mary turned up very much alive.

68. WEST, LIFT UP YOUR HEAD, *supra* note 55, at 56-57. Not so in federal court, or as a matter of U.S. constitutional law. *Holland v. United States*, 348 U.S. 121 (1954).

69. *See* www.geocities.com/Nashville/3448/tom.html.

70. *Id.*

71. WEST, LIFT UP YOUR HEAD, *supra* note 55, at 56-57.

72. *Id.* This is consistent with West’s evidence that Ann Melton, as well as Tom Dula, were infected with “The Pock,” and blamed Laura for their infection. Curiously, Pauline Foster, a visitor who was a cousin of both Ann Melton and Laura Foster, was also infected.

73. On the other hand, there was no shortage of intrafamily slaughter, at least in the big urban areas in the latter part of the 19th Century. Many of these murders resulted from meddling in marital affairs. *See* Jeffrey Adler, “My Mother-In-Law Is To Blame, But I’ll Walk On Her Neck Yet”: *Homicide In Late Nineteenth-Century Chicago*, 31(2) J.

SOCIAL HIST. 253 (1997).

74. ENGLISH & SCOTTISH POPULAR BALLADS, *supra* note 3, at 118.

75. PENTANGLE, CRUEL SISTER (Sanctuary Records Group 2001). The modern group *Pentangle* cut a track of this song, inspired by a Scandanavian version.

76. Dowda, *supra* note 19, collects an interesting ballad called *Jellon Grame*. Jellon Grame murders his pregnant lover by stabbing her in the heart. The ballad is unclear, but it seems that this induced the birth of the child. Strangely enough, the murderer keeps the boy child and raises him as his sister's son. After the child is grown, he learns the truth from his father. The son then puts an arrow through his father's heart.

77. BURT, *supra* note 37, at 14.

78. *Id.*

79. *Id.* at 15.

80. GEO W. WARVELLE, LL.D., ESSAYS IN LEGAL ETHICS (Callaghan & Co. 1902).

81. *Id.* at 138 n.8. The authors could only find one reference to this murder in the "official reports." See the reference to the case in *State v. Cocklin*, 194 A. 378, 380 (Vt. 1937) (noting that "confessions which are not voluntary, but are made either under the fear of punishment if they are not made, or in the hope of escaping punishment if they are made, . . . are liable to be influenced by these motives" and are suspect). We were able to locate an account of the trial proceedings in JOHN D. LAWSON, *The Trial of Stephen and Jesse Boorn for the Murder of Russel Colvin, Bennington, Vermont, 1819*, in 6 AMERICAN STATE TRIALS 73 (Scholarly Resources Inc. 1972) (1914). This "Murder That Wasn't," provided the plot for a novel entitled *The Dead Alive* by the Victorian writer Wilkie Collins, a prolific pal of Charles Dickens. WILKIE COLLINS, *THE DEAD ALIVE* (Shepard & Gill 1874). The murder also inspired a book entitled *The Counterfeit Man: The True Story of the Boorn-Colvin Murder Case* by Gerald McFarland. GERALD W. MCFARLAND, *THE "COUNTERFEIT" MAN: THE TRUE STORY OF THE BOORN-COLVIN MURDER CASE* (Pantheon Books 1990). We should add, however, that the McFarland book put a whole new twist on the Boorn-Colvin murder case by suggesting that the Boorns actually committed the murder, and had hired an imposter to pass himself off as Colvin and save their necks! Soren Quist meets Martin Guerre? *The "Counterfeit" Man* was the subject of a Comment by Rob Warden, written for the Northwestern School of Law's Center on Wrongful Convictions. See Rob Warden, *The*

Murder That Wasn't (2002), available at <http://www.law.northwestern.edu/depts/clinic/wrongful/documents/TheMurder.htm>. See also Peter Brooks, *Storytelling Without Fear? Confession In Law & Literature*, 8 YALE J.L. & HUMAN. 1 (1996). The Boorn-Colvin case is very much like the famous story of Danish parson Soren Quist, who was executed in 1625 for the supposed murder of his handyman. Many years later the handyman returned to town. It was learned that following a fight with the parson, in which the parson had admittedly struck the handyman with the flat of a shovel, the handyman and his brother dressed a corpse in the handyman's clothes and buried the body behind the parson's house. Then the handyman fled town. The elaborate hoax worked all too well. The befuddled parson even confessed. Janet Lewis's, *The Trial of Soren Quist*, JANET LEWIS, THE TRIAL OF SOREN QUIST (Doubleday & Co., Inc. 1947), was inspired by an excerpt concerning the case in S.M. Phillips' *Famous Cases of Circumstantial Evidence*. S.M. PHILLIPS, FAMOUS CASES OF CIRCUMSTANTIAL EVIDENCE (Estes & Lauriat 1874). There is also a purported diary of the presiding magistrate, one Erik Sorensen, pertinent parts of which are available online. See Steen Steensen Blicher, *The Rector of Veilbye* (2001), available at <http://www.blackmask.com/books35c/reveildex.htm>. We also refer the reader to the curious Kentucky case of Condry Dabney, reported in Underwood, *infra* note 108, at 329. In that case, Dabney was convicted of murdering Mary Vickery after the discovery of a body thought to be hers. Following his conviction Mary turned up very much alive. She had been "just a travelin' round."

82. MCFARLAND, *supra* note 81, at 171.

83. *Id.* at 49, 89, 171.

84. One is reminded of Hamlet, McBeth and his Lady, and even O.J. See GERALD F. UELMEN, THE O.J. FILES: EVIDENTIARY ISSUES IN A TACTICAL CONTEXT 12-26 (West Group 1998).

85. MCFARLAND, *supra* note 81, at 171.

86. Excerpts can be found in Alan Gutmacher, M.D.'s obscure tract, *Bootlegging Bodies: A History of Bodysnatching*. ALAN F. GUTTMACHER, BOOTLEGGING BODIES: A HISTORY OF BODYSNATCHING 43-46 (Public Library, Fort Wayne & Allen County 1955).

87. *Id.* at 43-46.

88. *Id.* at 44-45.

89. On the migration of both, see W. PORTER MAYO, MEDICINE IN THE ATHENS OF THE WEST 1799-1950: THE HISTORY AND INFLUENCE OF THE LEXINGTON-FAYETTE COUNTY MEDICAL SOCIETY (Walker P. Mayo

ed., McClanahan Publishing 1999).

90. GUTTMACHER, *supra* note 86, at 40.

91. As an aside, we note that there are a number of apocryphal stories (i.e., urban legends) about the "not quite dead." See NORMAN ADAMS, *DEAD AND BURIED: THE HORRIBLE HISTORY OF BODYSNATCHING* 25 (Bell Publishing Co. 1972) (reporting a case from 18th century Germany in which the body of a hung prisoner was turned over to the surgeons for use in an anatomy lesson. The doctor noted vital signs, but after reflecting aloud on the cruelty of the crime, he turned to his colleagues and added, "I say, gentlemen, all these things considered, it is my opinion that we had better proceed in the dissection." *Id.*); ERIK LARSON, *THE DEVIL IN THE WHITE CITY: MURDER, MAGIC, AND MADNESS AT THE FAIR THAT CHANGED AMERICA* 404 (Crown Publishers 2003) cites a story run by the Chicago Tribune, dateline March 2, 1890, telling the story of a St. Louis man who had been buried alive, prematurely, after falling into a deep coma. He was dug up by a team of medical students who needed a body for dissection. The students were surprised at the first incision. They abandoned the dissection and decided to drop off the "corpse" at the courthouse, where the man woke up with a painful and inexplicable slice across the abdomen.

92. Erick Larson's new book *The Devil In The White City* tells the parallel stories of architect Daniel Burnham's construction of the "White City" at the 1893 Columbian Exposition in Chicago, and serial killer Dr. Henry Holmes's construction of, and slaughters at, his nearby "World's Fair Hotel." LARSON, *supra* note 91, at 150-51. The "Doctor" had one of his first victims turned into a fine skeleton by his "articulator" friend Charles Chappell. The skeleton was purchased by the Hahneman Medical College located in Chicago. Dr. Holmes is thought to have been one of America's first known serial killers.

For her part, Olive Burt collects two ballads inspired by an early female serial killer, Belle Gunness, who lured men to her farm outside of Chicago by matrimonial advertisements in the Chicago papers. See BURT, *supra* note 37, at 73-76. Nowadays she would probably use the Internet. Belle's handiwork was documented. See STEWART H. HOLBROOK, *MURDER OUT YONDER: AN INFORMAL STUDY OF CERTAIN CLASSIC CRIMES IN BACK-COUNTRY AMERICA* (Macmillan 1941); LILLIAN DE LA TORRE, *THE TRUTH ABOUT BELLE GUNNESS* (1955); JANET L. LANGLOIS, *BELLE GUNNESS: THE LADY BLUEBEARD* (Indiana Univ. Press 1988). See also <http://www.patterson-smith.com/SerialArt.htm>.

93. PATRICIA COHEN, *THE MURDER OF HELEN JEWETT: THE LIFE AND DEATH OF A PROSTITUTE IN NINETEENTH-CENTURY NEW YORK* 265 (1998).

94. BURT, *supra* note 37, at 18-21.

95. *Id.* at 21.

96. For the bizarre history of a notorious bodysnatcher see yet another small and obscure tract, LINDEN EDWARDS, CINCINNATI'S "OLD CUNNY": A NOTORIOUS PURVEYOR OF HUMAN FLESH (Public Library of Fort Wayne and Allen County 1955). Ironically, "Old Cunny" himself ended up as a skeleton in the museum of the Medical College of Ohio. *Id.* at 8.

97. *The Lone Green Valley*, available at www.bluegrassnet.com/tgbs/T-/The_lone_green_valley.html. It looks like a cross between *Omie Wise* and *Banks of the Ohio*.

98. *Id.*

99. BURT, *supra* note 37, at 31-32. As a matter of fact, Burt may be the one who has it wrong. Anne Cohen's scholarly treatment of the story in *Poor Pearl, Poor Girl* states that Scott Jackson was her beau. ANNE B. COHEN, POOR PEARL, POOR GIRL: THE MURDERED-GIRL STEREOTYPE IN BALLAD AND NEWSPAPER (Austin: Univ. of Texas Press 1973).

100. COHEN, *supra* note 99. For opinions upholding convictions of Walling and Jackson, see *Walling v. Commonwealth*, 38 S.W. 429 (Ky. 1896); *Jackson v. Commonwealth*, 38 S.W. 1091 (Ky. 1896).

101. See Daniel A. Cohen, *The Beautiful Female Murder Victim: Literary Genres and Courtship Practices in the Origins of a Cultural Motif, 1590-1850*, 31(2) J. SOCIAL HIST. 277 (1997).

102. COHEN, *supra* note 99, at 102-03. These themes are exhibited in *Down in the Willow Garden*, variations of which are known as *Pretty Polly* and *Rose Connelly*.

103. Allen Lengel, *Unfinished Business; 2 Years Later, Levy's Death Still a Mystery*, *NEWSDAY*, May 25, 2003, at A15.

104. In the *Canadian Journal for Traditional Music*, Janet McNaughton traces elements of the same themes in her article *Variation and Stability in Two Murder Ballads of Placentia Bay, Newfoundland*. Janet McNaughton, *Variation and Stability in Two Murder Ballads of Placentia Bay, Newfoundland*, 12 CAN. FOLK MUSIC J. 3 (1984).

105. EDWIN M. BORCHARD, *CONVICTING THE INNOCENT* (Yale Univ. Press 1932).

106. Richard Underwood, *Perjury: An Anthology*, 13 ARIZ. J. INT'L & COMP. L. 307, 329 (1996).

107. See FAITH McNULTY, *THE BURNING BED* (Harcourt Brace Jovanovich 1980) (discussion of the 1977 Michigan case of *People v. Francine Hudes*).

108. For cases in which advocates successfully defended women by painting them as victims or appealing for sympathy because the defendant was "a woman," see Martin Wiener, *Alice Arden to Bill Sikes: Changing Nightmares of Intimate Violence in England, 1558-1869*, 40(2) JOURNAL OF BRITISH STUDIES 184, 196 (2001). For an American parallel consider the case of Lizzie Borden, especially as painted in *The Fall River Tragedy*. EDWIN H. PORTER, *THE FALL RIVER TRAGEDY* (Geo. R.H. Buffinton 1893). This work painted an unflattering picture of the Borden family and Lizzie's "environment," so much so that the family bought up as many copies as possible to suppress the work. One of the authors of this Article (Carol) managed to procure a rare copy.

109. Borchard reported the names incorrectly, and also reported the sentence as a mere five years.

110. *Murder in Rhyme*, TIME, Feb. 24, 1930, at 16-17 (confession located in article). Borchard's citation was slightly incorrect.

111. BORCHARD, *supra* note 105, at 344.

112. From the record album "I Can See A New Day." It is possible that this song is based on *Lady Isabel and the Elf Knight*, in which the would-be victim resists successfully. ENGLISH & SCOTTISH POPULAR BALLADS, *supra* note 3, at 22. John Jacob Niles states that this early ballad turned up in Clark and Fayette Counties, Kentucky, in versions that had pioneer white girls outwitting Indian captors. JOHN JACOB NILES, *THE BALLAD BOOK OF JOHN JACOB NILES* 25 (Univ. Press of Kentucky 2000) (1961). He includes a version from North Carolina which is very much like Seeger's. For other connections see DAVID C. FOWLER, *A LITERARY HISTORY OF THE POPULAR BALLAD* 171 (Duke Univ. Press 1968), which alludes to *The Fair Flower of Northumberland*. ENGLISH & SCOTTISH POPULAR BALLADS, *supra* note 3, at 111.

113. See TRADITIONAL BRITISH BALLADS, *supra* note 11, at 118.

114. An exotic bird hung in the room of an innkeeper's daughter in this period? Still, a nice touch. A parrot also figures into a version of *Pretty Polly* which is attributed to a Mrs. Polly Johnson of Wise, Virginia, and collected in the James Taylor Adams Collection of the University of Virginia College at the Wise/Blue Ridge Institute of Ferrum College. *Pretty Polly*, available at <http://www.ferum.edu/applit/texts/PrPolly.htm>. In this version Pretty Polly is not the victim. With the help of the parrot, who fronts for her, she avoids three men who have already

killed her cousin. She manages to turn them in and they get their “just desserts.” The story of a young girl, aided by her parrot, turning in a murderer is also found in a ballad styled *Mr. Fox*, reprinted in *Why The Possum's Tail is Bare and Other Classic Southern Stories*. JIMMY N. SMITH, *WHY THE POSSUM'S TAIL IS BARE AND OTHER CLASSIC SOUTHERN STORIES* (Avon Books 1993). This may all trace back to The Grimm's Brothers' 1812 and 1857 versions of *The Robber Bridegroom*. Another interesting story is Marie Campbell's, *The Beggar with the Baskets*. MARIE CAMPBELL, *The Beggar with the Baskets*, in *TALES FROM THE CLOUD WALKING COUNTRY* 200-201 (Univ. of Georgia Press 2000). In this odd story, supposedly collected in Kentucky during the Great Depression, sisters escape from a beggar who has murder on his mind. Two are murdered and cut into pieces. The third somehow puts them back together, and, carrying her newly resurrected and healed sisters in a basket, escapes in a disguise made of bird feathers. Weird!